

BEFORE THE TENNESSEE REGULATORY AUTHORITY AT

NASHVILLE, TENNESSEE

April 30, 2002

IN RE:

PETITION OF BELL SOUTH
TELECOMMUNICATIONS, INC.
TO CONVENE A CONTESTED CASE
TO ESTABLISH "PERMANENT
PRICES" FOR INTERCONNECTION
AND UNBUNDLED NETWORK
ELEMENTS

DOCKET NO.
97-01262

ORDER DENYING TARIFF NO. 01-00646 AND MOTION TO
MODIFY TARIFF REVISION REQUIREMENT

This matter came before the Tennessee Regulatory Authority ("Authority") at a regularly scheduled Authority Conference held on September 25, 2001 for consideration of the *Motion of BellSouth Telecommunications, Inc. to Modify Tariff Revision Requirement Consistent With FCC Order* filed by BellSouth Telecommunications, Inc. ("BellSouth") on June 21, 2001 and Tariff No. 01-00646 filed by BellSouth on June 26, 2001 and supplemented on July 10, 2001.

I. Procedural History

On February 23, 2001, the Authority issued its *Final Order* memorializing the deliberations in this docket that occurred at the December 19, 2000 Authority Conference. In the *Final Order*, the Authority directed BellSouth to file "tariffs containing the [unbundled network element ("UNE")] rates approved by the authority in this docket as

well as the terms and conditions applicable to each UNE.”¹ On January 18, 2001, BellSouth filed a *Filing in Response to Action Taken at December 19, 2000 Director’s Conference*.² On February 20, 2001, the Southeastern Competitive Carriers Association (“SECCA”) filed a *Motion for Enforcement of TRA Order*.

Soon thereafter, disputes arose over the effective date of the rates adopted at the December 19, 2000 Authority Conference, the interconnection agreement amendment process, and the need for a tariff versus a standard interconnection agreement. Director H. Lynn Greer, at the request of the Authority, acted as the Presiding Officer to aid in the resolution these disputes. The Presiding Officer issued an Order on February 23, 2001 and made the following findings and conclusions: 1) “[t]he new rates adopted by the Authority on December 19, 2000 . . . are effective as of December 19, 2000”; 2) “the filing of a tariff is necessary”; 3) “BellSouth’s tariff is overdue”; and 4) “BellSouth has agreed to make the December 19th rates available to any requesting CLEC with an interconnection agreement through a simple amendment process.”³ Based on these findings, the Presiding Officer ordered BellSouth to file a compliant tariff on March 2, 2001. BellSouth filed Tariff No. 01-00205 on March 2, 2001.

The Authority next considered this matter at the March 6, 2001 Authority Conference. During the Conference, the Directors questioned the parties with regard to when, after the parties complete the amendment process, the permanent rates would replace the old rates on the CLEC’s monthly bill. BellSouth stated that the permanent

¹ *Final Order*, p. 20 (Feb. 23, 2001).

² BellSouth’s filing included three attachments that contained the rates, terms, and conditions it believed would comply with the Authority’s December 19th rulings. BellSouth filed corrections to the January 18th filing on January 31, 2001 and February 12, 2001.

³ *Order Reflecting Action Taken During February 22, 2001 Proceeding*, pp. 5-6 (Feb. 23, 2001).

rates would appear on the CLEC's bill possibly within one billing cycle, but no more than two billing cycles.⁴ The Directors next turned to the amendment process. A lengthy discussion ensued, and the Authority recessed the proceedings so that counsel for BellSouth could discuss several issues raised during the discussions with his client. Upon the Authority reconvening the proceeding, counsel for BellSouth agreed that "BellSouth will accept a letter request from CLECs as sufficient to implement the new rates for all CLECs that have interconnection agreements in Tennessee."⁵

In addition to obtaining these agreements, the Authority ordered that a notice issue setting a due date for comments on Tariff No. 01-00205.⁶ In accordance with this directive, the Authority issued a notice on March 6, 2001 requesting that parties file comments by March 16, 2001. As directed, AT&T Communications of the South Central States, Inc. and SECCA filed comments on March 16, 2001, and BellSouth filed its response on April 16, 2001.

The Authority considered Tariff No. 01-00205 and the comments thereto at a regularly scheduled Authority Conference on June 12, 2001. During the deliberations, the Authority generally found that "[c]ertain provisions in the Tariff are inconsistent with past decisions of the Authority in Docket No. 97-01262 and in other arbitration proceedings, generic dockets, and enforcement proceedings."⁷ More specifically, the Authority held that Tariff No. 01-00205: 1) omits non-recurring rates for new combinations;⁸ 2) omits UNE rates for Operator Services and Directory Assistance; 3) omits rates for interim

⁴ See Transcript of Proceedings, Mar. 6, 2001, pp. 41 & 60.

⁵ *Id.* at 94-95.

⁶ See *id.* at 90-91.

⁷ *Order Denying Tariff No. 01-00205 and Opening Docket No. 01-00526*, p. 5 (Feb. 23, 2001).

⁸ New combinations are combinations of unbundled network elements that are not presently combined, but that are of a type of combination that is combined somewhere in BellSouth's network.

number portability; and 4) contains language that is inconsistent with the Authority's ruling in Docket No. 97-01262 on access to loops served by Integrated Digital Loop Carrier ("IDLC").⁹ Based on these findings, the Authority voted unanimously to deny Tariff No. 01-00205 and ordered BellSouth to file a revised tariff by June 26, 2001. The Authority instructed BellSouth as follows:

[T]he revised tariff shall be consistent with decisions in Docket No. 97-01262 and, if BellSouth chooses to include terms and conditions for subjects not addressed in Docket No. 97-01262, such as reciprocal compensation, then such terms and conditions shall be consistent with all decisions of the Authority in other arbitration proceedings, generic dockets and enforcement proceedings. Specifically, the Authority directed that the revised tariff shall include non-recurring rates for new combinations pursuant to the March 6, 2001 Erratum; rates for Operator Services, Directory Assistance, and interim number portability found in the December 1, 1999 cost study; and terms and conditions consistent with the Authority's decisions on access to Integrated Digital Loop Carrier.¹⁰

On June 21, 2001, BellSouth filed its *Motion of BellSouth Telecommunications, Inc. to Modify Tariff Revision Requirement Consistent with FCC Order* ("Motion"). BellSouth claimed that the Authority's previous rulings in regard to the application of reciprocal compensation to ISP-bound traffic¹¹ are inconsistent with the FCC's April 27, 2001 *Order on Remand and Report and Order*.¹² Thus, BellSouth contended that the Authority should not require it to file a tariff consistent with previous Authority decisions on reciprocal compensation.

BellSouth filed the pending tariff, Tariff No. 01-00646, on June 26, 2001 and additional intercarrier compensation language on July 10, 2001. The Authority considered

⁹ See *Order Denying Tariff No. 01-00205 and Opening Docket No. 01-00526*, pp. 5-6, (Feb. 23, 2001).

¹⁰ *Id.* at 7.

¹¹ Traffic bound for an Internet Service Provider.

¹² *Motion of BellSouth Telecommunications, Inc. to Modify Tariff Revision Requirement Consistent With FCC Order*, p. 2 (Jun. 21, 2001) (citing *In re: Implementation of the Local Competition Provision in the Telecommunications Act of 1996*, FCC 01-131, CC Docket No. 96-98, 16 FCC Rcd. 9151 (Apr. 27, 2001) (Order on Remand and Report and Order)).

the Motion and Tariff No. 01-00646 at a regularly scheduled Authority Conference on September 25, 2001 and rendered the following findings and conclusions.

II. Findings and Conclusions

1. The Authority's *Order Denying Tariff No. 01-00205 and Opening Docket No. 01-00526* did not require BellSouth to include terms and conditions for reciprocal compensation in its proposed tariff. Therefore, the Directors voted unanimously to deny BellSouth's Motion and the supplemental tariff language filed on July 10, 2001. Further, the Directors voted unanimously to address the application of the FCC's April 27, 2001 Order as well as any other intercarrier compensation issues in Docket No. 01-00526, *In re: Generic Docket to Establish Generally Available Terms and Conditions for Interconnection*.

2. BellSouth included non-recurring rates for new combinations in Tariff No. 01-00646. BellSouth did not, however, file documentation supporting its proposed cost-based rates for new combinations. Therefore, the Directors voted unanimously that they could not accept BellSouth's proposed rates as permanent and adopted the rates as interim rates subject to a true-up upon the adoption of permanent rates. Further, the Directors voted unanimously to consider the adoption of permanent rates in Docket No. 01-00339, *In re: Generic Docket to Consider Technology Advances and Geographic Deaveraging*, thereby affording all interested parties an opportunity to be heard on this matter.

3. Tariff No. 01-00646 contained provisions that are inconsistent with previous decisions of the Authority. In order to prevent the filing of yet another non-compliant tariff, the Directors voted unanimously to order BellSouth to modify Tariff No. 01-00646 as follows:

a. There exists the potential for conflict between a term and condition in Tariff No. 01-00646 and a particular interconnection agreement between BellSouth and a CLEC. To avoid any future disputes, the Directors voted unanimously that BellSouth shall replace the language in Section C1.1.E with the following:

The provisions of this Tariff do not supersede or in any way modify the provisions, including rates, terms, and conditions or any currently effective agreement between any CLEC and the Company. If and when a term or condition found in the tariff conflicts with the term or condition found in the interconnection agreement, the term or condition found in the interconnection agreement shall prevail.

b. Sections 1.2.2.1 and 4.2 defined "currently combined" network elements as those that are already combined within BellSouth's network to a given location to a particular end user.¹³ One could interpret the term "currently combined" differently than the term "currently combines," which is used in FCC Rule 51.315(b). Thus, to ensure consistency and compliance with FCC Rule 51.315(b), the Directors voted unanimously to order BellSouth to modify Tariff No. 01-00646 by replacing language in both Sections 1.2.2.1 and 4.2 with the following:

BellSouth currently combines network elements when it provides the same combination to itself anywhere in its network. Pursuant to the Authority's orders in Docket No. 97-01262 and Docket No. 99-00430, BellSouth shall provide to CLEC-1 in Tennessee any combination of unbundled network elements that it currently combines. BellSouth does not waive any right to appeal or otherwise challenge the Authority's directive that BellSouth provide these Combinations.

c. The last sentence of Section 4.3.1 read, "BellSouth shall provide [Enhanced Extended Links ("EELs")] regardless of whether such EEL[s] are currently

¹³ See *Competitive Local Exchange Carrier Tariff for the State of Tennessee*, Access to Network Elements and Other Services, sec. 1.2.2.1, p. 12; sec. 4.2, p. 26 (Jun. 26, 2001).

combined.”¹⁴ To further avoid use of the term “currently combined,” the Directors voted unanimously to order BellSouth to strike this sentence.

d. Section 2.2.1 contained language that is inconsistent with the Authority’s decision in this docket on CLEC access to loops served by IDLC. In the *Order Re: Reconsideration and Clarification of Interim Order on Phase I*, the Authority ruled “that BellSouth must offer IDLC to competitors on a per channel basis in central office feeder routes and serving areas where IDLC is available to BellSouth customers.”¹⁵ Although Tariff No. 01-00646 allowed CLEC access to IDLC, it also afforded BellSouth the opportunity to circumvent the Authority’s Order by permitting BellSouth to unilaterally choose not to provide IDLC on a loop-by-loop basis. To foreclose this opportunity, the Directors voted unanimously to order BellSouth to append the following language to the end of Section 2.2.1: “When possible, CLEC-1 will be allowed to choose between the available alternative arrangements listed above.” Moreover, the Directors voted unanimously that the last sentence of Section 2.2.1 is unnecessary given the additional language and, thus, BellSouth shall strike the last sentence of Section 2.2.1

e. Section 4.3.8 provided that recurring and nonrecurring rates for combinations shall be the sum of the appropriate rates of each stand-alone element that comprises the combination.¹⁶ This is inconsistent with the Authority’s previous holding that required BellSouth to account for efficiencies when calculating the non-recurring

¹⁴ *Id.* at sec. 4.3.1, p. 26.

¹⁵ *Order Re: Reconsideration and Clarification of Interim Order on Phase I*, p. 22 (Nov. 3, 1999).

¹⁶ *See Competitive Local Exchange Carrier Tariff for the State of Tennessee*, Access to Network Elements and Other Services, sec. 4.3.8, p. 29 (Jun. 26, 2001).

charges for new combinations.¹⁷ Therefore, the Directors voted unanimously to order BellSouth to strike Section 4.3.8.

f. Sections 11.1.1 through 11.1.6 required CLECs to perform criminal background checks on and provide security training to their employees before the employees may access BellSouth facilities.¹⁸ This issue was not before the agency or deliberated by the Directors in this docket. Therefore, the Directors voted unanimously to order BellSouth to strike Sections 11.1.1 through 11.1.6.

IT IS THEREFORE ORDERED THAT:

1. The *Motion of BellSouth Telecommunications, Inc. to Modify Tariff Revision Requirement Consistent with FCC Order* filed by BellSouth Telecommunications, Inc. on June 21, 2001 is denied.

2. The Authority shall address intercarrier compensation issues related to the Federal Communication Commission's April 27, 2001 *Order on Remand and Report and Order* in Docket No. 01-00526, *In re: Generic Docket to Establish Generally Available Terms and Conditions for Interconnection*.

3. The rates contained in Tariff No. 01-00646 for new combinations are adopted as interim rates subject to a true-up upon the adoption of permanent rates. The Authority shall set permanent rates for new unbundled network element combinations in Docket No. 01-00339, *In re: Generic Docket to Consider Technology Advances and Geographic Deaveraging*.

¹⁷ See *Correction of Transcript of April 25, 2000 Authority Conference and Erratum to Second Interim Order Re: Revised Cost Studies and Geographic Deaveraging*, p. 2 (Mar. 6, 2001).

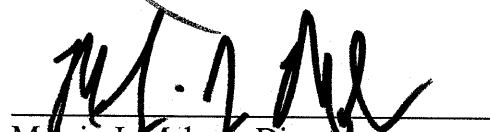
¹⁸ See *Competitive Local Exchange Carrier Tariff for the State of Tennessee*, Physical Collocation, secs. 11.1.1 – 11.1.6, pp. 65-66 (Jun. 26, 2001).

4. Tariff No. 01-00646 filed by BellSouth Telecommunications, Inc. on June 26, 2001 and supplemented on July 10, 2001 is denied. BellSouth shall file a revised tariff consistent with this Order no later than **Thursday, October 25, 2001**.


5. Any party aggrieved by this Order may file a Petition for Reconsideration pursuant to Tenn. Code Ann. § 4-5-317 with the Tennessee Regulatory Authority within fifteen (15) days of the entry of this Order.


Sara Kyle, Chairman


H. Lynn Greer, Jr., Director


Melvin J. Malone, Director

ATTEST:


K. David Waddell, Executive Secretary